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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOAQUIN DIAZ,

Defendant and Appellant.

B217447

(Los Angeles County
Super. Ct. No. BA353596)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dennis J. Landin, Judge. Affirmed as modified.

Lea Rappaport Geller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

FACTS AND ANALYSIS

This matter stems from a domestic dispute between appellant Joaquin Diaz and E.D., who lived together with E.D.'s three daughters. Diaz is the father of E.D.'s youngest daughter, J.D. On March 3, 2009, Diaz, suspecting that E.D. was cheating on him with another man, slapped and hit her with his fist. Diaz also hit E.D. on the arm with the flat of a kitchen knife and "poked" her arm and her foot, breaking the skin. As E.D. shouted to her daughters to call the police, Diaz covered her mouth with a blanket and threatened to kill her with the knife. He then pulled her pajama bottoms off and touched her "private part" with his fingers. Diaz continued to kick and bite her on the shoulder until the police arrived. Diaz testified at trial that he walked in on E.D. in bed with another man. When he tried to leave her, she became hysterical and they struggled. He saw that she held a knife in her hand and took it away from her. He admitted he slapped her but denied any other assault.

A jury convicted Diaz of one count of: (1) corporal injury to a co-habitant in violation of Penal Code section 273.5, subdivision (a) (count 1);¹ (2) criminal threats under section 422 (count 2); (3) assault with a deadly weapon under section 245, subdivision (a)(1) (count 3); and (4) simple assault under section 240 (count 5). As to counts one and two, the jury found true the allegation that Diaz used a knife within the meaning of section 12022, subdivision (b)(1). Diaz was sentenced to four years in state prison, consisting of the middle term of three years for the charge of corporal injury to a co-habitant plus one year for the weapon enhancement. The sentences on the remaining counts were ordered to run concurrently.

Diaz appeals from the judgment, contending that the sentences on the remaining counts and the weapon enhancement should have been stayed (rather than ordered to run concurrently) because his acts were part of a singular course of conduct and incident to one objective under section 654. The People concur. Our review of the record shows that the witnesses consistently attributed Diaz's actions to a jealous rage (whether

¹ All further section references will be to the Penal Code unless otherwise specified.

justified or not). There appears to be no evidence of any other criminal intent to support the trial court's decision to impose concurrent sentences contrary to section 654. (*People v. Deloza* (1998) 18 Cal.4th 585, 592.)

DISPOSITION

The trial court is directed to issue a corrected abstract of judgment showing the sentences on counts 2, 3 and 5 are stayed pursuant to Penal Code section 654, until the sentence imposed on count 1 is served. The corrected abstract shall be forwarded to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.